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men's Compensation Act, § 62, was enacted to provide a means not only of enforcing an award which had been affirmed on appeal, but also all the final awards of the Commission from which there has been no appeal, as well as all agreements, between the parties approved by the Commission.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476.]

4. Master and Servant (§ 417 (1)*)—Supreme Court of Appeal without Jurisdiction of Appeal from Industrial Commission.—The Supreme Court of Appeals is without jurisdiction to entertain an appeal from the Industrial Commission's award, unless possibly under Const. 1902, § 88, where a constitutional question is raised, or there is an attempt to exceed jurisdiction justifying exercise of original jurisdiction to issue the writ of prohibition; the Workmen's Compensation Act, §§ 61 and 62, providing exclusive remedies for review, notwithstanding the general provisions in Code 1919, § 6336, for appeals.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 881.]

Error to Circuit Court, Norfolk County.

Proceedings under the Workmen's Compensation Act by Mary Lucy Harper and others against the Richmond Cedar Works, employer, and the Liberty Mutual Insurance Company, insurance carrier, to recover compensation for the death of Leroy Harper, employee. Compensation was adjudged, and employer and insurance carrier bring error. On motion to dismiss the writ of error. Dismissed for lack of jurisdiction.

Venable, Miller, Pilcher & Parsons, of Norfolk, and *Varney S. Ward*, of Richmond, for plaintiffs in error.

J. W. Wilcox, for defendants in error.

ROBERTSON'S EX'R *v.* ATLANTIC COAST REALTY CO.

March 17, 1921.

[106 S. E. 521.]

1. Witnesses (§ 183½*)—New, Vol. 9 Key-No. Series—Agent of Plaintiff Corporation Held Not "Adverse or Interested Party" under Statute in Action against Executor.—In an action by a realty company for breach of a parol contract whereby it was to have the exclusive sales privilege of land owned by defendant's decedent, plaintiff's agent held not an "adverse or interested party" within Code 1919, § 6209, so as to require corroboration of his testimony, he being competent at common law, and not rendered incompetent by the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

statute, notwithstanding he was plaintiff's contracting agent in making the contract sued upon.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Adverse Party. For other cases, see 13 Va.-W. Va. Enc. Dig. 950.]

2. Witnesses (§ 164 (1)*)—Decedent's Memoranda and Bill to Perpetuate Testimony Held Inadmissible in Action against Executor.

—In a realty corporation's action against an executor for breach of an oral contract of agency with decedent, a memorandum, made by decedent before his death, containing a full statement of the matter in controversy, and a bill to perpetuate testimony, held inadmissible under Code 1919, § 6209, providing that if an adverse party testifies, all entries, memoranda, and declarations by the party incapable of testifying, made while capable, are admissible; no adverse party having testified.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 952.]

3. Appeal and Error (§ 971 (1)*)—Examination of Witnesses Chiefly in Discretion of Court.—The subject of examination of witnesses lies chiefly in the discretion of the court in which the case is tried, and its exercise is rarely, if ever, controlled by the appellate court.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 953.]

4. Trial (§ 62 (2)*)—Refusal to Allow Recall of Witness for Defendant after Plaintiff Had Rested Held Error.—In a realty corporation's action on an oral contract of agency made with decedent in his lifetime, it was error to refuse to allow decedent's widow to be recalled, after plaintiff had rested, to testify as to whether a complete and unconditional contract had been entered into, or whether a mere proposition had been made.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 963.]

5. Appeal and Error (§§ 499 (3), 500 (3)*)—Objections Must Be Incorporated by Bill or Certificate of Exceptions.—Where objections to reception of evidence and rulings thereon are relied on, they must be made parts of the record by proper bills of exception, or certificates of exception, otherwise they will be deemed to have been waived.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 375.]

6. Witnesses (§ 318*)—Reputation for Truth Inadmissible, Where Veracity Not Assailed.—In a realty company's action for breach of an alleged oral agency contract with defendant's decedent, originally brought against decedent, it was not error to exclude evidence as to decedent's reputation for truth and veracity, where decedent had not testified, and his reputation for truth and veracity had not been assailed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 970.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Brokers (§ 11*)—Evidence as to Local Real Estate Market after Breach of Exclusive Agency Contract Held Inadmissible in Suit for Breach.—In a realty company's action for breach of an exclusive agency to sell decedent's realty, entered into before his death, where it appeared that decedent, after the execution of the contract, had himself sold the land to another, it was not error to exclude evidence as to the condition of the real estate market in the vicinity shortly after the alleged breach.

8. Trial (§ 191 (3)*)—Instruction Assuming Facts Testified to by Impeached Witness Held Erroneous.—In a realty company's action against an executor for breach of an exclusive agency contract made with decedent, it was error for the court to instruct on an assumption that the employment was for 12 months, where a witness testifying to that point was claimed by defendant to be impeached.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 731.]

9. Brokers (§ 11*)—Plaintiff, Suing for Breach of Exclusive Agency Contract, May Base Loss of Profits on Sale to Another.—In a realty company's action for breach of an exclusive agency contract for sale of realty based on a sale by the owner himself after the contract had been entered into, plaintiff could elect to base its loss of profits on the sale actually made by the owner.

Errors to Hustings Court of Petersburg.

Assumpsit by the Atlantic Coast Realty Company against Robertson's Executor. Judgment for plaintiff, and defendant brings error. Reversed.

Mann & Townsend, of Petersburg, and *C. V. Meredith*, of Richmond, for plaintiff in error.

Lassiter & Drewry, of Petersburg, and James Mann, of Norfolk, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* CITY OF RICHMOND.

March 17, 1921.

[106 S. E. 529.]

1. Street Railroads (§ 32*)—Operation Evidence of Construction of Ordinance by Parties.—The operation by a traction company of its street cars over the tracks of another company under the terms of a city ordinance for so long as the two companies were separate corporations and for several years thereafter, with the consent of the city authorities, if not sufficient to establish estoppel to deny that the ordinance authorized such operation, is at least of weight as a con-

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